

LOCAL LAW

A LOCAL LAW AMENDING CHAPTER 75 OF THE CODE OF THE CITY OF YONKERS ENTITLED "POLICE" BY ADDING A NEW ARTICLE VI ENTITLED "PUBLIC NUISANCE ABATEMENT"

Be it enacted by the City Council of the City of Yonkers, as follows:

Section 1. Chapter 75 of the Code of the City of Yonkers entitled "Police" and is hereby amended, in part by deleting the current Article VI entitled "Public nuisance" and adding thereto a new Article VI entitled "Public nuisance abatement" to read as follows:

ARTICLE VI

PUBLIC NUISANCE ABATEMENT

§75 – 22. Legislative findings.

It is the finding of this City Council that public nuisances exist in the City of Yonkers in the operation of certain establishments and the use of property in flagrant violation of the penal laws relating to controlled substances, dangerous drugs, prostitution, stolen property and illegal use or possession of weapons, as well as other provisions of state and local law, all of which substantially and seriously interfere with the interests of the public in the quality of life and total community environment, commerce in the City, property values and the public health, safety and welfare. The City Council further finds that the occurrence of such activities and violations is detrimental to the health, safety and welfare of the City of Yonkers and of the businesses thereof and visitors thereto. It is the purpose of this law to authorize and empower the Police Commissioner to impose sanctions and penalties for such public nuisances, and such powers may be exercised either in conjunction with or apart from the powers contained in other laws, without prejudice to the use of procedures and

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remedies available under other laws. The City Council further finds that the sanctions and penalties imposed by the Commissioner pursuant to this law constitute an additional and appropriate method of law enforcement in response to the proliferation of the above described public nuisances. These sanctions and penalties are reasonable and necessary in order to protect the health and safety of the people of the City of Yonkers and to promote the general welfare.

§75 – 23. Definitions.

Unless otherwise expressly stated, the following terms shall, for the purpose this law, have the meanings indicated:

COMMISSIONER – The Commissioner of the Police Department, or his or her designee.

MORTGAGEE – The person or entity who is listed as the mortgagee on any unsatisfied or otherwise open mortgage on the premises recorded in the Office of the Westchester County Clerk.

OWNER – Those shown to be the owner or owners on the records of the City of Yonkers, Department of Assessment, those identified as the owners or owners of the building or whose name is listed on any document describing him, her, them or some other entity as owner, recorded in the office of the Westchester County Clerk.

PREMISES – The building, place or property whereon a public nuisance is being conducted or exists.

PUBLIC NUISANCE

- A. For purposes of this law, a public nuisance shall be deemed to exist whenever, through violations of any of the following provisions resulting from separate incidents occurring at or predicated at events circumstances or activities occurring on the premises, 12 or more points are accumulated within a period of six months, or 18 or more points are accumulated within a period of 12 months in accordance with the following point system. Where more than one violation

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occurs during a single incident, the total points for the incident shall be the highest point value assigned to any single violation. The following violations shall be assigned the point value indicated :

- (1) Article 220 of the Penal Law (Controlled Substances Offenses) or a plea to a lesser included offense thereunder. Six Points.;
- (2) Article 221 of the Penal Law (Offenses involving Marijuana) or a plea to a lesser included offense thereunder. Six Points.;
- (3) Article 225 of the Penal Law (Gambling Offenses) or a plea to a lesser included offense thereunder. Six Points.;
- (4) Article 230 of the Penal Law (Prostitution Offenses) or a plea to a lesser included offense thereunder. Six Points.;
- (5) Sections 165.40, 165.45, 165.50, 165.52 and 165.42 of the Penal Law (Criminal Possession of Stolen Property) or a plea to a lesser included offense thereunder. Six Points.;
- (6) Sections 65 or 82 of the Alcoholic Beverage Control Law or a plea to a lesser included offense thereunder. Six Points.;
- (7) Article 265 of the Penal Law (Firearms and Other Dangerous Weapons) or a plea to a lesser included offense thereunder. Six Points.;
- (8) Sections 260.20 and 260.21 of the Penal Law (Unlawfully Dealing with a Child) or a plea to a lesser included offense thereunder. Six Points.;
- (9) Article 263 of the Penal Law (Sexual Performance by a Child) or a plea to a lesser included offense thereunder. Six Points.;
- (10) Section 415-a of the Vehicle and Traffic Law (Vehicle Dismantlers) or a plea to a lesser included offense thereunder. Four Points.;

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- (11) Section 175.10 of the penal Law (Falsifying Business Records) or a plea to a lesser included offense thereunder. Four Points.;
- (12) Sections 170.65 and 170.70 of the Penal Law (Forgery of and Illegal Possession of a Vehicle Identification Number) or a plea to a lesser included offense thereunder. Four Points.;
- (13) Possession, use, sale or offer for sale of any alcoholic beverage in violation of Article 18 of the Tax Law , or of any cigarette or tobacco products in violation of Article 20 of the Tax Law or a plea to a lesser included offense thereunder. Four Points.;
- (14) Article 178 of the Penal Law (Criminal Diversion of Prescription Medications and Prescriptions) or a plea to a lesser included offense thereunder. Four Points.
- (15) Section 147 of the Social Services Law. (Food Stamp Program Fraud.) or a plea to a lesser included offense thereunder. Four Points.;
- (16) Operating a business during hours which the business is required to be closed pursuant to Chapter 43 of the Code of the City of Yonkers, otherwise known as the Zoning Code: Four Points.

B. For the purposes of this law, a conviction for an offense in a court of competent jurisdiction or an administrative bureau shall not be required. Instead the City shall prove by a preponderance of the evidence that the violations have occurred. However, a conviction as defined and applied in accordance with the provisions of Section 1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, shall constitute conclusive proof of a violation. Conviction of an attempt to commit a violation of any of the specified provisions shall be considered a conviction for a violation of the specified provision.

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§75-24. Remedies to abate public nuisances.

In addition to the enforcement procedures established elsewhere, the Commissioner after notice and an opportunity for a hearing, shall be authorized:

- A. To order the discontinuance of such activity at the premises where such public nuisances exist; and/or
- B. To order the closing of the premises to the extent necessary to abate the public nuisance.

§75-25. Service of notice.

- A. Prior to the issuance of an order by the Commissioner, pursuant to this law, the Commissioner shall give notice and opportunity for a hearing to the owner, and any other person directly or indirectly in control of the premises wherein the public nuisance is being conducted, maintained or permitted. Such notice and opportunity to be heard may be given to a mortgagee of the premises. Such notice shall be served upon an owner or any other person directly or indirectly in control of the premises pursuant to Article 3 of the New York State Civil Practice Law and Rules, and upon a mortgagee by means of certified mail, return receipt requested, sent to the mortgagee's last known address, provided that any other service other than delivery to the person to be served shall be complete immediate upon delivery, mailing or posting without the necessity of filing proof of service with the clerk of the court.
- B. The notice specified in Subsection A of this section shall:
 - (1)Specify the activity creating the public nuisance;
 - (2) Provide 30 days for elimination for the public nuisance;

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(3) Inform the person to whom it is directed of their right to apply within 10 days of service of the notice for a hearing before the Commissioner;

(4) Inform the owner or any other person directly or indirectly in control of the premises that upon expiration of 30 days after service without a hearing before the Commissioner, or upon noncompliance with any written agreement reached at the hearing, the Commissioner shall act to obtain compliance as provided by this law; and

(5) Inform the owner or any other person directly or indirectly in control of the premises of the obligation to post a copy of the notice within 5 days, in a conspicuous place, so that all premises occupants and others entering the premises shall have notice that the public nuisance is being conducted, maintained or permitted on the premises and that upon expiration of 30 days after service of the notice, the Commissioner shall act to obtain compliance as provided in this law, including but not limited to, closing the premises.

§75-26. Lack of Knowledge no defense.

The lack of knowledge of, acquiescence or participation in, or responsibility for a public nuisance on the part of the owner, mortgagee or any other person directly or indirectly in control of the premises, or having any interest in the premises or in any property, real or personal, used in conducting or maintaining the public nuisance, shall not be a defense by such owner, mortgagee or other person.

§75-27. Issuance of order.

The Commissioner shall issue the order provided for in Section 75-25 herein by posting said order on the premises wherein the public nuisance is occurring and mailing a copy by first class mail of said order to the owner, mortgagee or any other persons directly or indirectly in control of the premises, within one business day of the posting of said order on the premises.

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§75-28. Enforcement of order

- A. No sooner than five business days after the issuance of the order pursuant to Sections 75-25 and 75-28, and upon the directive of the Commissioner, officers of the Yonkers Police Department are authorized to act upon and enforce such order
- B. Where the Commissioner closes a premises pursuant to this law, such closing shall be for such period as the Commissioner may direct, but in no event shall the closing be for a period of greater than one year from the issuance of the order.
- C. Upon receiving a copy of the order issued by the Commissioner, pursuant to Sections 75-25 and 75-28, the Corporation Counsel shall maintain a special proceeding to affix a civil penalty in the amount of up to \$5,000, and to collect any costs and expenses incurred by the City of Yonkers, in commencing the proceeding, closing the premises and in relocating any occupants on the premises. The Corporation Counsel shall file a notice of pendency of the proceeding in the Westchester County Clerk's Office.
- D. The judgment in such proceeding, in favor of the City of Yonkers, shall establish the penalty sued for with costs and disbursements as a lien upon the premises, subject only to taxes, assessments, water rates, mortgages and mechanic's liens as they exist thereon.

§75-29. Judgment and action by the Corporation Counsel.

- A. The Corporation Counsel shall have the power, on ex parte application to any court of competent jurisdiction, to appoint a receiver of rents and profits of the premises for the purposes of collecting the civil penalty established pursuant to Section 75-29 herein, and abating the public nuisance. The receiver shall have the powers,

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duties and rights of a receiver of rents and profits of real estate, as provided by law; provided, however, that the Corporation Counsel shall act as counsel to the receiver, and the receiver shall not be allowed any expenditure for counsel fees, and the receiver's services and those of any agent or agents whom the receiver may retain. The receivership shall continue until the amount of the City of Yonkers' liens, with interest at the rate of 9% per annum and the receiver's commissions, have been fully paid and the nuisance abated; provided further, that nothing in this section shall be construed to prevent any prior lienor from applying to a court in a proper case for a receiver of the premises.

- B. At any time after the entry of any judgment establishing a lien upon the premises, the Corporation Counsel, on behalf of the City of Yonkers, may apply to the court for leave to sell the premises. Upon such application, the court may order the premises sold at public auction, subject to taxes, assessments, water rates, mortgages and mechanics liens.

§75-30. Closing not possession.

A closing directed by the Commissioner pursuant to this Article, shall not constitute an act of possession, ownership or control by the City of Yonkers over the closed premises.

§75-31. Disobedience of Police Commissioner's order.

- A. It shall be a Class I offense for any person to use or occupy or to permit any other person to use or occupy, the premises or any portion thereof, ordered closed by the Commissioner.
- B. Mutilation or removal of a posted order of the Commissioner shall be a Class II offense.
- C. Intentional disobedience of or resistance to any provision of the order issued by the Commissioner, in addition to any other punishment prescribed by law, shall be a Class II offense.

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D. Each day's violation shall be a separate offense.

§75-32. Promulgation of rules and regulations.

The Commissioner may promulgate such rules and regulations as may be necessary to carry out the provisions of this law.

§75-33. Administrative liability.

Neither the City of Yonkers, nor any officer, agent or employee thereof, shall be personally liable for any damage resulting from any official determination, order or action required or permitted under this law.

§75-34. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of this article and the application of such provision to the other persons or circumstances shall not be rendered invalid thereby."

Section 2. This Local Law shall take effect immediately.